

Missouri First Steps Parental Rights

March 2005

Missouri Families Have The Right To.....

An Evaluation

The law provides that all eligible children will receive early intervention services without regard to race, culture, religion, disability, or ability to pay. Eligibility is decided by an evaluation of the child (within 45 days of referral). The evaluation must be done by a multidisciplinary team of two or more qualified professionals who examine the child's medical history, development, and current abilities. If the child is eligible for services, the child and family also have the right to ongoing assessments of the child's strengths, skill levels, progress, and needs.

An Individualized Family Service Plan (IFSP)

Within 45 days of the referral, a meeting must be held for each eligible child and family to develop an Individualized Family Service Plan (IFSP) for providing early intervention services that includes the family's concerns, priorities, and resources for their child. The IFSP is written for a year and is reviewed at least every six months. It includes the major outcomes for the child and family, how progress will be measured, what and where services will be provided, when they will begin and for how long, methods of payment, and transition at various times throughout the process and upon the child's third birthday.

Consent

Written parental consent must be obtained before conducting an initial evaluation/assessment, or beginning any early intervention services. Parents may choose to not give consent for any particular service without jeopardizing any other services, and they may refuse a service at any time, even after accepting it, without affecting other intervention services.

- (a) Consent means that –
- (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communications;
- (2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- (3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

- (a) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent –
- (1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and
- (2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

Privacy

The law provides for the protection of your privacy at all times. Unless another exception under the Family Educational Rights and Privacy Act (FERPA), 34 CFR Part 99, applies, your written consent must be obtained before personally identifiable information is:

- (a) Disclosed to anyone other than officials of participating agencies collecting or using the information under First Steps; or,
- (b) If the information is to be used for any other purpose than meeting the requirements under First Steps.

If your failure to give consent constitutes neglect under Missouri law, a report will be made to the proper authorities as required by state law.

However, information released from records to participating agencies without parental consent is permitted as authorized by the Family Educational Rights and Privacy Act (FERPA), and its implementing regulations. See 34 CFR Section 99.31.

Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information shall receive training or instruction regarding Missouri's policies and procedures on confidentiality.

Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Destruction of Records

The First Steps Program shall inform you when personally identifiable information collected, maintained, or

used under this part is no longer needed to provide early intervention services to your child; the information must be destroyed at your request three years after it is no longer needed to provide early intervention services; however, a permanent record of your child's name, address, phone number and enrollment may be maintained without time limitations.

Prior Notice

Parents must receive written notice before the public agency or service provider proposes or refuses to initiate or change the identification, evaluation, or placement of a child or the provision of early intervention services to the child and the child's family. This notice must inform the parent of the action(s) being proposed or refused and the reason(s) for the action(s). A copy of the Parent's Rights Statement must be provided with the notice. Notices must be written in a way that is understandable to the general public. If English is not the native language of the family, the family has the right to receive information in their native language, unless it is clearly impossible to do so. If a family uses another method of communication, such as sign language or Braille, then they have the right to receive the notice's contents in that way. Native language means the language or mode of communication normally used by the parent.

Review Records

Parents must be allowed to examine, inspect, and review records relating to their child and family in accordance with the confidentiality procedures in the regulations under part B of the Act (34 CFR 300.560 through 300.576). DESE through its System Point of Entry (SPOE) contractor shall comply with a parent request to access records, without unnecessary delay and before any meeting regarding an IFSP or any hearing, and in no case more than 45 days after the request has been made.

Parents have: a right to a response from the SPOE to reasonable requests for explanations and interpretations of the records; the right to request that the SPOE provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review records; and the right to have a representative of the parent inspect and review the records.

The DESE via its SPOE contractor shall keep a record of access of parties obtaining access to early intervention records collected, maintained or used (except access by parents and authorized employees of DESE and its SPOE contractor), including the name of the party, the date access was given, and the purpose for which the party was authorized to use the records.

If any early intervention records include information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or be informed of that specific information.

The SPOE shall provide parents, on request, a list of the types and locations of early intervention records collected, maintained or used by the SPOE.

The SPOE may charge for copies of records, but only if the fee does not effectively prevent the parents from exercising their rights to inspect and review those records. The SPOE may not charge a fee to search for or to retrieve information. Parents may ask that records be amended if they believe the records contain inaccurate information and, if the System Point of Entry (SPOE) disagrees (which must be communicated within a reasonable time after receipt or request), the parents may request a hearing to challenge the information contained in the file after being informed of the refusal and advised of the right to a hearing. If, as a result of the hearing, the information is found to be inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the public agency will change the information accordingly and inform the parents in writing. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, the SPOE shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the SPOE. Any explanation placed in the records of the child under this section must be maintained by the agency as part of the records of the child as long as the record or the contested portion is maintained by the agency, and, if the records of the child or the contested portion is disclosed by the SPOE, to any party, the explanation must also be disclosed to the party.

Due Process Hearings

Families (and DESE) have the right to resolve, through a procedure called due process, concerns about a child's identification (eligibility), evaluation, placement, or the provision of early intervention services. A request for a due process hearing arises from the proposal or refusal of the public agency or a service provider to initiate or change the identification, evaluation, placement, or provision of early intervention services.

To initiate a due process hearing, a written request for a due process hearing with a statement of concerns must be submitted to the Director of Compliance, Division of Special Education, Department of Elementary and Secondary Education, P.O. Box 480, Jefferson City, MO 65102-0480.

You and DESE will be offered the opportunity to use mediation to resolve your concerns before going to a due process hearing. This is voluntary, does not take away your right to a due process hearing, and cannot be used to delay your right to a hearing. Mediation services are at no cost to you. You and the Department of Elementary and Secondary Education would need to agree to use mediation and agree to a trained, qualified, and impartial mediator selected from a list maintained by the Department of Elementary and Secondary Education who has been trained in effective mediation

techniques. The list includes individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. The mediation session will be scheduled at a location and time mutually agreed upon by the parties. No more than three people can accompany each party to the session unless both parties mutually agree to allow more. Attorneys are not allowed to participate or attend the mediation session. You may be accompanied by a lay advocate. Any agreement reached by the parties in the mediation process must be set forth in a written mediation agreement.

All discussions held during the mediation are confidential and cannot be used later as evidence in a due process hearing or civil action. The parties may be required to sign a confidentiality pledge prior to the commencement of the process. Mediation must be scheduled within 15 days and completed within 30 days of the decision to mediate.

A due process hearing will be held to review your concerns. The due process hearing will be held at a time and place that is reasonably convenient to you. Within 30 calendar days of receipt of your request for a due process hearing, a hearing will be held to review your concerns and a written decision mailed to you.

- The hearing will be conducted by an impartial hearing officer named by the Assistant Commissioner of Special Education on behalf of the State Board of Education. This hearing officer shall be knowledgeable of services for infants and toddlers, have knowledge of Part C requirements and the needs of eligible children and their families, and shall not be an employee of any state agency or service providers responsible for providing early intervention services to your child. There shall not be any personal or professional conflict of interest that would affect the hearing officer's objectivity in making a decision. The hearing officer shall not be an employee of any agency or other entity involved in the "care of the child." A person who otherwise qualifies as an impartial person is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.
- If an issue is raised in a child complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and DESE must inform the complainant to that effect. A complaint alleging a DESE contractor/provider's failure to implement a due process decision must be resolved by the lead agency.

If a complaint is received that is also the subject of a due process hearing, or contains multiple issues of which one or more are part of that hearing, the state must stay the part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any

issue in the complaint that is not a part of the due process action must be resolved within the 60 calendar day time-line.

- At the hearing you may be accompanied and advised by counsel and by individuals with special knowledge or training in early intervention services for children with disabilities.
- At the hearing you may present evidence and confront, cross-examine, and compel the attendance of witnesses.
- At the hearing you may prohibit the introduction of evidence that has not been disclosed to you at least five days prior to the hearing.
- A record of the proceedings will be maintained. You may obtain a written or electronic verbatim transcription of the proceedings.
- The hearing officer will listen to the presentation of the parties involved, examine relevant information, and reach a timely resolution. You have the right to obtain written Findings of Fact and Decisions, and you will receive a copy of this.
- If you or DESE disagree with the final decision, either party has the right to bring civil action. This action may be brought in a state or federal district court.

During these proceedings, unless otherwise agreed to by you and the agency, your child will continue to receive the early intervention services that were being provided at the time you made the request for the due process hearing. If the proceedings involve initial services, your child must receive those services that are not in dispute.

Child Complaints

If any person or organization believes a responsible public agency has violated any state or federal regulation implementing Part C of the IDEA, a signed, written child complaint may be filed with the Missouri Department of Elementary and Secondary Education. The complaint must include a statement that the agency violated a requirement of IDEA and the facts on which the statement is based. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint was received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting reimbursement or corrective action (including compensatory services) for a violation that occurred not more than three years prior to the date the complaint is received.

The complaint will be investigated and resolved within 60 days and a written decision that addresses each allegation in the complaint with findings of fact conclusions and the reasons for the Department's final decision will be sent to the party filing the complaint. An independent on-site

investigation will be conducted if DESE determines this necessary.

The complainant will have the opportunity to submit additional information, either orally or in writing, about the complaint allegations. The investigation will include a review of all relevant information and will result in an independent determination as to whether DESE's contractors/providers have violated Part C of IDEA. The 60-day time-line will be extended only if exceptional circumstances exist with respect to a particular complaint.

In resolving a complaint in which it has found the public agency out of compliance, the Department shall address how to correct the violation, including, as appropriate, the awarding of monetary reimbursement or other corrective actions appropriate to the needs of the child and appropriate future provision of services for all children with disabilities. If needed, technical assistance activities and negotiations will be undertaken.

Educational Surrogate Services

The SPOE must determine if a child is a ward of the state or does not have a parent that can be identified or found, so that a person will be assigned to act as an Educational Surrogate by DESE. An Educational Surrogate may represent the child in all matters related to the evaluation and assessment of the child, the development and implementation of the IFSP, annual evaluations and periodic reviews the ongoing provision of early intervention services and any other rights established under IDEA. Selection of an educational surrogate shall be made by DESE from a pool of approved surrogates located geographically near the child. The

surrogate selected shall have no interest or conflict with the interests of the child he or she represents and has knowledge and skills that ensure adequate representation of the child. The surrogate may not be an employee of any state agency and may not be a person, or an employee of a person providing early intervention services to the child or any family member of the child.

To Find Out More About Your Rights

You can always talk to these persons: the person providing your child's Early Intervention services, your service coordinator, your county System Point of Entry (SPOE) or the Department of Elementary and Secondary Education (DESE).

Families can contact their county First Steps Office for more information by calling toll free:

1-866-583-2392

The Department of Elementary and Secondary Education does not discriminate on the basis of race, color, national origin, age, sex, or disability in its programs, services, or employment practices.

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